THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.288 of 2006

Dated: 07.12.2007

Between:

B. Suryakumari and another.

..Petitioners.

and

The State Bank of India, rep. by its authorized officer, Pushkar Ghat Branch, Rajahmundry, East Godavari District.

..Respondent.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.288 of 2006

ORDER:

This Court issued rule nisi on 04.01.2006 and granted interim direction in WPMP No.362 of 2006 subject to condition that the petitioners deposit half of the amount demanded under the notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter in short referred to 'the Act' for the purpose of convenience) after deducting the amount already deposited within six weeks from the said date. WVMP No.211 of 2006 is filed by the vacate stay petitioner-State Bank of India, rep. by its Authorised Officer, Pushkar Ghat Branch,Rajahmundry,East Godavari District, the respondent in the writ petition.

2. At the request of the counsel on record, the writ petition itself is taken up for final disposal.

3. This writ petition is filed for a writ of mandamus declaring the action of the respondent in taking steps to dispossess the petitioners from the residential house property bearing door No.10-4-6,

10-4-6/2&3, ward No.7, Dasarivari Street, Rajahmundry, East Godavari District by invoking the notice under Section 13(2) of the

Act without considering the objections, dated 14.10.2005, of the petitioners, as illegal, arbitrary and violative of the fundamental rights guaranteed under Constitution of India and consequently, to direct the respondent not to dispossess the petitioners from the said property.

4. It is averred that the petitioners had raised housing loan from the respondent Bank for construction of the house property and after availing the loan facility for construction, the petitioners had paid some amount. Further, it is stated that the respondent had issued demand notice under Section 13(2) of the Act for enforcement of security interest on 09.09.2005 determining a sum of Rs.2,31,749.21 ps and 2,39,856.00 against the housing loan A/c.No.01593053492 and 01593053493 availed by the petitioners and demanded an amount of Rs.2,39,564.53 against the housing loan No.0159305349200 availed by the first petitioner. After receipt of the notices, detailed objections had filed before the respondent that the determination of the amount demanded is not correct and the statement not reveals the payments made crediting the amount paid towards interest is also not correct and contrary to the public policy and requested for one time settlement by reducing the interest part. Further, it is stated that the respondent without considering their objections and also without issuing the statement of account invoked the provisions of Act 54 of 2002 and taking steps to dispossess them from the residential property by invoking section 14 of the Act. It is stated that as the property is already secured with the bank there is no justification in invoking the provisions of the Act by concluding the entire procedure. It is

stated that the respondent has to consider the objections of the petitioners before proceeding to take possession of the property by issuing the possession notice. The action of the respondent in invoking the provisions of the Act 45 of 2002 is illegal, arbitrary and contrary to the principle decided by the Apex Court. It is further stated that the schedule property is a residential house and if they dispossessed, they will be put to serious prejudice and irreparable loss. In such circumstances, the writ petitioners had approached this Court praying for appropriate reliefs.

5. In the counter-affidavit, it is stated that the petitioners had raised housing loan in the year 2000 from the respondent Bank for construction of the house after availing the loan facility for construction. The petitioners utilized the same. It is further stated that it is true that the respondent-Bank had issued a demand notice under Section 13(2) of the Act, vide notice, dated 09.09.2005, demanding an amount of Rs.2,31,749.21 ps and Rs.2,39,856.00 against the housing loan availed. The allegation that the petitioners, after receipt of the notice, had submitted detailed objections before the respondent is incorrect. It is submitted that the petitioners after receipt of the notice have not submitted any objection petition dated 14.10.2005. There are no objections from the petitioners after expiry of the statutory period. As per the provisions of the Act, the respondent Bank had issued possession notice under Section 13(4) of the Act dated 13.12.2005. The allegation that the respondent proceeded without considering the objections by invoking the provisions of the Act 54 of 2002 is nothing but a false averment, concocted for the purpose

of filing the writ petition. The petitioners also never disputed the loan and interest. The petitioners have not submitted any objection petition. It is stated that the petitioners deliberately failed to repay the loan as per the terms and conditions of the loan obtained by them. The petitioners by suppressing the receipt of the possession notice under Section 13(4) of the Act filed this writ petition stating that the Bank proceeded with further proceedings under Section 14 of the Act. Further, it is stated that the allegation that the petitioners had no other alternative remedy is incorrect. The petitioners if aggrieved, should have filed an appeal under Section 17 of the Act against the proceedings under Section 13(4) of the Act and without availing such remedy and suppressing the issuance of notice under Section 13(4) of the Act, filed this writ petition with the false averment that they have filed objections to the notice dated 09.09.2005 under Section 13(2) of the Act. The Bank prays that the petitioners are put to strict proof of the allegation of submitting objection petition dated 14.10.2005. Since the petitioners had not submitted any objection petition, the Bank has already issued possession notice under Section 13(4) of the Act dated 13.12.2005 and further steps are being taken in accordance with the provisions of the Act. It is also stated that for the steps initiated under Section 13(2) of the act, no writ petition is maintainable, as observed by the Apex Court in the judgment reported in

2004(4) SCC 311. It is stated that the writ petition is devoid of merits and is liable to be dismissed. The petitioners are not entitled to any interim relief. In such circumstances, the vacation

of the interim order had been prayed for.

6. In the light of the respective stands taken by the parties, in a way the writ petition appears to be premature. However, the petitioners are given liberty to pursue the other legal remedies available to them. Except making this observation at this stage, no other relief can be granted by the writ Court.

7. With the above observation, the Writ Petition is disposed of. No order as to costs.

P.S.NARAYANA, J

Dated: 03.12.2007

sj